

year but none are sold for periods in excess of 2 years, or

(c) Each of the 3 taxable years preceding the first taxable year for which the election is effective if any memberships are sold for periods in excess of 2 years.

In each case there shall be set forth the amount of such income which would have been includible in each taxable year had the election been effective for the years for which the information is required.

In any case in which prepaid dues income is received from more than one trade or business, the statement shall set forth separately the required information with respect to each trade or business for which the election is made. See paragraph (c) of this section for additional information required to be submitted with the statement if the taxpayer also elects to include in gross income for the taxable year of receipt the entire amount of prepaid dues income attributable to a liability which is to end within 12 months after the date of receipt.

(b) *Election with consent.* A taxpayer may elect with the consent of the Commissioner, to apply the provisions of section 456 to any trade or business in which it receives prepaid dues income. The request for such consent shall be in writing, signed by the taxpayer or its authorized representative, and shall be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224. The request must be filed on or before the later of the following dates:

(1) 90 days after the beginning of the first taxable year to which the election is to apply, or

(2) February 28, 1968 and should contain the information described in paragraph (a) of this section.

See paragraph (c) of this section for additional information required to be submitted with the request if the taxpayer also elects to include in gross income for the taxable year of receipt the entire amount of prepaid dues income attributable to a liability which is to end within 12 months after the date of receipt.

(c) *“Within 12 months” election.* (1) The “within 12 months” election shall be made by including in the statement required by paragraph (a) of this sec-

tion or the request described in paragraph (b) of this section, whichever is applicable, a declaration that the taxpayer elects to include such income in gross income in the taxable year of receipt, and the amount of such income for each taxable year to which the election is to apply which has ended prior to the time such statement or request is filed. If the taxpayer is engaged in more than one trade or business for which the election under section 456 is made, it must include, in such statement or request, a declaration for each trade or business for which it wishes to make the “within 12 months” election.

(2) If the taxpayer does not make the “within 12 months” election for a trade or business at the time it makes the election under paragraph (a) or (b) of this section, but later wishes to make such election, it must apply for permission from the Commissioner. Such application shall be made in accordance with the provisions of section 446(e).

[T.D. 6937, 32 FR 16395, Nov. 30, 1967; 32 FR 17479, Dec. 6, 1967]

§ 1.456-7 Transitional rule.

(a) Under section 456(d)(1), a taxpayer making an election under section 456 shall include in its gross income for the first taxable year to which the election applies and for each of the 2 succeeding taxable years not only that portion of prepaid dues income which is includible in gross income for each such taxable year under section 456(a), but also an additional amount equal to that portion of the total prepaid dues income received in each of the 3 taxable years preceding the first taxable year to which the election applies which would have been includible in gross income for such first taxable year and such 2 succeeding taxable years had the election under section 456 been effective during such 3 preceding taxable years. In computing such additional amounts—

(1) In the case of taxpayers who did not include in gross income for the taxable year preceding the first taxable year for which the election is effective, that portion of the prepaid dues income received in such year attributable to a liability which is to end within 12 months after the date of receipt, no effect shall be given to a “within 12

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months" election made under paragraph (c) of § 1.456-6, and

(2) There shall be taken into account only prepaid dues income arising from a trade or business with respect to which an election is made under section 456 and § 1.456-6.

Section 481 and the regulations thereunder shall have no application to the additional amounts includible in gross income under section 456(d) and this section, but section 481 and the regulations thereunder shall apply to prevent other amounts from being duplicated or omitted.

(b) A taxpayer who makes an election with respect to prepaid dues income, and who includes in gross income for any taxable year to which the election applies an additional amount computed under section 456(d)(1) and paragraph (a) of this section, shall be permitted under section 456(d)(2) to deduct for such taxable year and for each of the 4 succeeding taxable years an amount equal to one-fifth of such additional amount, but only to the extent that such additional amount was also included in the taxpayer's gross income for any of the 3 taxable years preceding the first taxable year to which such election applies. The taxpayer shall maintain books and records in sufficient detail to enable the district director to determine upon audit that

the additional amounts were included in the taxpayer's gross income for any of the 3 taxable years preceding such first taxable year. If, however, the taxpayer ceases to exist, as described in paragraph (b) of § 1.456-4, and there is included in gross income, under such paragraph, of the year of cessation the entire portion of prepaid dues income not previously includible in gross income under section 456 for preceding taxable years (other than for amounts received prior to the first year for which an election was made), all the amounts not previously deducted under this paragraph shall be permitted as a deduction in the year of cessation of existence.

(c) The provisions of this section may be illustrated by the following example:

Example. (1) Assume that X Corporation, a membership organization qualified to make the election under section 456, elects to report its prepaid dues income in accordance with the provisions of section 456 for its taxable year ending December 31, 1961. Assume further that X Corporation receives in the middle of each taxable year \$3,000 of prepaid dues income in connection with a liability to render services over a 3-year period beginning with the date of receipt. Under section 456(a), X Corporation will report income received in 1961 and subsequent years as follows:

| Year of receipt | Total receipts | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 |
|---------------------------------------|----------------|-------|---------|---------|-------|-------|-------|-------|-------|
| 1961 | \$3,000 | \$500 | \$1,000 | \$1,000 | \$500 | ..... | ..... | ..... | ..... |
| 1962 | 3,000 | ..... | 500 | 1,000 | 1,000 | \$500 | ..... | ..... | ..... |
| 1963 | 3,000 | ..... | ..... | 500 | 1,000 | 1,000 | \$500 | ..... | ..... |
| 1964 | 3,000 | ..... | ..... | ..... | 500 | 1,000 | 1,000 | \$500 | ..... |
| 1965 | 3,000 | ..... | ..... | ..... | ..... | 500 | 1,000 | 1,000 | \$500 |
| 1966 | 3,000 | ..... | ..... | ..... | ..... | ..... | 500 | 1,000 | 1,000 |
| 1967 | 3,000 | ..... | ..... | ..... | ..... | ..... | ..... | 500 | 1,000 |
| 1968 | 3,000 | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 500 |
| Total reportable under section 456(a) | | 500 | 1,500 | 2,500 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 |

(2) Under section 456(d) (1), X Corporation must include in its gross income for the first taxable year to which the election applies and for each of the 2 succeeding taxable years, the amounts which would have been

included in those years had the election been effective 3 years earlier. If the election had been effective in 1958, the following amounts received in 1958, 1959, and 1960 would have been reported in 1961 and subsequent years:

| Year of receipt | Amount received | Years of including additional amounts | | |
|-----------------|-----------------|---------------------------------------|-------|-------|
| | | 1961 | 1962 | 1963 |
| 1958 | \$3,000 | \$500 | | |
| 1959 | 3,000 | 1,000 | \$500 | |
| 1960 | 3,000 | 1,000 | 1,000 | \$500 |

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| Year of receipt | Amount received | Years of including additional amounts | | |
|---|-----------------|---------------------------------------|------|------|
| | | 1961 | 1962 | 1963 |
| Total additional amounts to be included under section 456(d)(1) | 2,500 | 1,500 | 500 | |

(3) Having included the additional amounts as required by section 456(d)(1), and assuming such amounts were actually included in gross income in the 3 taxable years preceding the first taxable year for which the election

is effective, X Corporation is entitled to deduct under section 456(d)(2) in the year of inclusion and in each of the succeeding 4 years an amount equal to one-fifth of the amounts included, as follows:

| Year of inclusion | Amount | Years of deduction | | | | | | |
|---|---------|--------------------|-------|-------|-------|-------|-------|-------|
| | | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 |
| 1961 | \$2,500 | \$500 | \$500 | \$500 | \$500 | \$500 | ..... | ..... |
| 1962 | 1,500 | ..... | 300 | 300 | 300 | 300 | \$300 | ..... |
| 1963 | 500 | ..... | ..... | 100 | 100 | 100 | 100 | \$10 |
| Total amount deductible under section 456(d)(2) | 500 | 800 | 900 | 900 | 900 | 400 | 100 | |

(4) The net result of the inclusions under section 456(d)(1) and the deductions under

section 456(d)(2) may be summarized as follows:

| | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 |
|---|-------|---------|---------|---------|---------|---------|---------|---------|
| Amount includible under section 456(a) | \$500 | \$1,500 | \$2,500 | \$3,000 | \$3,000 | \$3,000 | \$3,000 | \$3,000 |
| Amount includible under section 456(d)(1) | 2,500 | 1,500 | 500 | ..... | ..... | ..... | ..... | ..... |
| Total | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 |
| Amount deductible under section 456(d)(2) | 500 | 800 | 900 | 900 | 900 | 400 | 100 | ..... |
| Net amount reportable under section 456 | 2,500 | 2,200 | 2,100 | 2,100 | 2,100 | 2,600 | 2,900 | 3,000 |

[T.D. 6937, 32 FR 16396, Nov. 30, 1967]

§ 1.457-1 Compensation deferred under eligible State deferred compensation plans.

(a) *Year of inclusion in gross income—*
(1) *In general.* For taxable years beginning after December 31, 1978, section 457(a) provides that amounts deferred (within the meaning of § 1.457-1(d)(3)) under an eligible State deferred compensation plan that satisfies the requirements of § 1.457-2 (an “eligible plan”) are includible in gross income only for the taxable year in which paid or otherwise made available to the participant or beneficiary under the plan.

(2) *Maximum deferral; in general.* Under section 457(c)(1), the exclusion from gross income described in this paragraph (a) does not apply to compensation deferred under one or more eligible plans to the extent that the compensation so deferred during a participant's taxable year exceeds the greater of—

(i) \$7,500, or,

(ii) As applicable, the sum of the plan ceilings determined under § 1.457-2(f), to the extent such sum does not exceed \$15,000.

(3) *Maximum deferral; exclusions under section 403(b) taken into account.* Under section 457(c)(2), for a participant's taxable year for which an amount is contributed to an annuity contract described in section 403(b) (including a custodial account described in section 403(b)(7)) on behalf of the participant, subparagraph (2) of this paragraph (a) is applied by substituting—

(i) For \$7,500, an amount equal to \$7,500, less the amount excludable from the participant's gross income under section 403(b) for the taxable year,

(ii) For the sum of the plan ceilings determined under § 1.457-2(f), an amount equal to the sum of the plan ceilings determined under § 1.457-2(f), less the amount excludable from the